# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>June 17, 2003 |
| V | No. 238555<br>Genesee Circuit Court |
| TERRANCE MICHAEL McKELLER,<br><br>Defendant-Appellant. | LC No. 01-007978-FC |

Before: Owens, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b, and one count of second-degree criminal sexual conduct, MCL 750.520c. The trial court sentenced defendant, as a third-offense habitual offender, MCL 769.11, to concurrent terms of 22½ to 50 years' imprisonment for each first-degree criminal sexual conduct conviction, and 10 to 30 years' imprisonment for the second-degree criminal sexual conduct conviction. Defendant appeals as of right. We affirm.

Defendant contends that the trial court erred in denying his pretrial motion to quash the information. We review a trial court's decision on a motion to quash an information for an abuse of discretion. *People v Clement*, 254 Mich App 387, 389; 657 NW2d 172 (2002). "An abuse of discretion occurs if an unbiased person, considering the facts on which the trial court based its decision, would find no justification for the ruling made." *Id.*

Specifically, defendant contends that there was insufficient evidence establishing that defendant was in a position of authority over the victim. We note that a trial court's error in denying a defendant's motion to quash the information based on the sufficiency of the evidence supporting a charge is rendered "harmless" by the defendant's conviction on that charge. *People v Moorer*, 246 Mich App 680, 682; 635 NW2d 47 (2001). Here, defendant does not dispute that his convictions were supported by sufficient evidence. Thus, we could simply affirm on that basis. *Id.*

We further note that defendant was charged with first-degree criminal sexual conduct based on two alternatives: (i) that he was in a position of authority over the victim and used that authority to coerce the victim, MCL 750.520b(1)(b)(*iii*); and (ii) that he caused personal injury to the victim by using force to accomplish the sexual acts, MCL 750.520b(1)(f). The victim's testimony provided sufficient evidence that defendant used force to commit both acts that form

the basis of the first-degree criminal sexual conduct charges. In addition, the victim testified that she was bruised during the incident. The examining physician testified that the victim also suffered a torn hymen consistent with a forcible rape. Accordingly, the evidence introduced at trial, viewed in a light most favorable to the prosecution, was sufficient to support a finding that defendant caused a personal injury to the victim. MCL 750.520b(1)(f). *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). Because the evidence was sufficient to support defendant's first-degree criminal sexual conduct convictions on at least one of the statutory alternatives, MCL 750.520b(1), any error in denying defendant's motion to quash was harmless. *Moorer*, *supra* at 682.

Next, defendant contends that the trial court erred in denying his pretrial motion to suppress an incriminating, written statement. Defendant contended that the statement was involuntary because the interrogating officer threatened him. The gravamen of this issue is a challenge to the trial court's factual finding that the interrogating officer, who denied threatening defendant, was a more credible witness than defendant. Indeed, resolution of this issue turned on the credibility of the witnesses. Generally, an "appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). The trial court's finding is further supported by the difference between the victim's story and defendant's statement. If the interrogating officer threatened defendant to supply an incriminating statement, it seems more likely that that officer would have wanted a statement that actually corroborated the victim's story. Accordingly, we are not persuaded that the trial court clearly erred in resolving the credibility question in the interrogating officer's favor. *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001). Consequently, we reject defendant's contention that the trial court erred in denying his pretrial motion to suppress the written statement.[1] *Id.*

Defendant also contends that his sentences were unconstitutional as "cruel and unusual" punishments, US Const Amend VIII, or "cruel or unusual" punishments, Const 1963, art 1, § 16. Specifically, defendant contends that the trial court did not consider his "rehabilitative potential." However, in light of defendant's criminal history and multiple parole violations, we are not persuaded that defendant's sentence was cruel or unusual. *People v Poole*, 218 Mich App 702, 715; 555 NW2d 485 (1996); see also *People v Nunez*, 242 Mich App 610, 618 n 2; 619 NW2d 550 (2000) (recognizing that a punishment that "passes muster" under our state constitution necessarily passes muster under the federal constitution).

Moreover, we note that defendant was sentenced within the appropriate Legislative sentencing guideline range. Thus, because defendant is not contending there was a scoring error or that inaccurate information was relied on in determining his sentence, we must affirm the trial court's sentence. MCL 769.34(10). Finally, the trial court did not sentence defendant to a longer term than that provided by the appropriate sentencing guidelines range; accordingly, MCL

[1] We note that defendant fails to cite any authority in support of his assertion that the interrogating officer was required to advise defendant of his rights by reading off a card, rather than from memory. Accordingly, we deem this argument abandoned. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001).

769.34(7) did not mandate that the trial court provide an "advice-of-rights" instruction. Consequently, we reject defendant's challenges to his sentences.

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Christopher M. Murray